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No. 90-903

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1990

JOHN W. EVANS and THE ESTATE L.
JUANITA EVANS,

Petitioners,
v.

TWIN FALLS COUNTY, a governmental entity;
HAROLD JENSEN, GARY KAUFMAN, and
MARK E. STEVENS, individuals,

Respondents.

**Petition For Writ Of Certiorari
To The Supreme Court
Of The State Of Idaho**

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. In accordance with Supreme Court Rule 15.1, and in order to clearly avoid any claim by Petitioners that Respondents have waived any objection in this regard, it is Respondents' position that none of the "Questions Presented" set forth in the Petition for Writ of Certiorari are well taken, that the Petition is frivolous under Supreme Court Rule 42.2 and should never have been filed. Accordingly, Respondents have no "quesitons" to present to this Court and their arguments evidencing the inapplicability of each of the "Questions Presented" by the Petitioners are set forth hereinafter.

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Respondents, Twin Falls County, Harold Jensen, Gary Kaufman, and Mark E. Stevens, oppose Petitioners' request for Writ of Certiorari and file this Brief setting forth the reasons for their opposition to the Petition.

STATEMENT OF THE CASE

The Petition, at pages 3 through 5, contains a section caption "A Concise Statement of the Case." In order to point out the misstatements of fact perceived in the Petition, as required by Supreme Court Rule 15.1, but in the

interest of brevity and in an attempt to avoid unnecessary repetition of information already in the record, Respondents submit that the statement of the case set forth at pages 1 through 6 of the Opinion of the Supreme Court of Idaho (Pet. App. A, pages 1-6), contains a more accurate statement of the case than the "Concise Statement of the Case" set forth in the Petition. Respondents adopt the statement of the case at pages 1 through 6 of "Appendix A" to the Petition by this reference and respectfully request that this Court rely upon the statement of the case set forth therein, rather than any factual assertions set forth by the Petitioners.

After the trial court granted Respondents' Motion for Summary Judgment on the basis set forth in the Memorandum Opinion Granting Defendants' Motion for Summary Judgment (Pet. App. C), Petitioners appealed to the Idaho Supreme Court and that court affirmed the decision of the trial court. Petitioners now seek certiorari in this Court.

As will be set forth in greater detail hereinafter, Respondents also submit that there are serious doubts whether any of the questions sought to be reviewed are actually raised by the underlying facts and the record presented with the Petition. More specifically, Respondents submit that the questions sought to be reviewed were not raised in the Amended Complaint, as claimed at page 5 of the Petition, and the Petition does not contain those portions of the underlying record evidencing that the questions were timely and properly raised below, as is required by Supreme Court Rule 14.1(h).

ARGUMENT

I.

Petitioners' First Question - "Does State Common Law Which Holds that Personal Causes of Action Abate upon Death Defeat a Valid Civil Rights Claim Brought Under 42 U.S.C. Section 1983?" - Is Inapplicable to the Actual Facts of this Case and is Therefore Not Properly Before this Court for the Following Reasons:

1. This question, as presented by Petitioners, contemplates the existence of a "valid civil rights claim" brought under 42 U.S.C. Section 1983; however, the trial court concluded that the Petitioners did not show any admissible evidence of a proximate relationship between the incident alleged and their claims (Pet. App. C., page 47) and the Supreme Court of Idaho affirmed the trial court's ruling on this issue. (Pet. App. A, page 19.) When the Petitioners' failure to establish proximate cause is considered in light of this Court's longstanding recognition that one of the elements of a *prima facie* case under Section 1983 is that the defendants' alleged conduct must be the proximate and actual cause of the alleged deprivation of rights [*Martinez v. California*, 444 U.S. 277, 100 S.Ct. 553, 62 L.Ed.2d 481 (1980)], Respondents submit that the question of abatement of a "valid civil rights claim" is not actually presented under the facts of this case, because the trial court and appellate court below correctly ruled that the Petitioners in fact had no "valid" civil rights claim.
2. Petitioners' argument that *Idaho Code Section 5-311* is "inhospitable" to the survival of actions brought pursuant to Section 1983 and the authorities Petitioners rely upon in making that assertion are inapplicable to and distinguishable from the facts presented by this case because the

Petitioners' argument and authorities presume the existence of proximate cause, which was not established in this case.

3. Assuming arguendo the question of the inhospitality of *Idaho Code Section 5-311* is raised under the facts of this case, Respondents submit that the Supreme Court of Idaho correctly concluded that, under the standards set out by this Court in *Robertson v. Wegmann*, 436 U.S. 584, 56 L.Ed.2d 554, 98 S.Ct. 1991 (1978), application of Idaho law precluding survivability is not inconsistent with 42 U.S.C. Sections 1983 and 1988. (Pet. App. A, pages 16-20.)

II.

Petitioners' Second Question – "Can a State Court of Last Resort Ignore 42 U.S.C. Section 1988, if State Law Does Not Provide an Adequate Remedy for a Violation of Civil Rights Brought Under 42 U.S.C. Section 1983?" – Is Inapplicable to the Facts of this Case and is Therefore Not Properly Before this Court for the Following Reasons:

1. Initially, Petitioners' allegation that the ruling of the Idaho Supreme Court in this case "ignores" 42 U.S.C. Section 1988 and the instruction of this Court, is erroneous on its face and that analysis ignores the fact that the trial court below determined that the Petitioners failed to establish an essential element of their federal claim (causation). This finding was affirmed by the Idaho Supreme Court. Such a finding obviates the need to analyze the Petitioners' federal claim any further because there is in fact no valid claim to be impacted by *Idaho Code Section 5-311* and any further consideration of the survival of such a claim would constitute consideration of a hypothetical issue.

2. Further, the Petitioners' allegation that the Idaho Supreme Court ruling in this case "is at odds with at least one other state court of last resort" (Petition, page 5), is incorrect because none of the authorities set forth in the Petition are based upon factual circumstances similar to those existing in this case and they are distinguishable as a matter of fact and law. In particular, Petitioners' reliance upon *Espinosa v. O'Dell*, 633 P.2d 455 (1981); 456 U.S. 430 (1982), dismissing certiorari for want of jurisdiction, is erroneous because this does not constitute a holding that is in conflict with the ruling of the Idaho Supreme Court for the reason that there was no finding by the court in *Espinosa* that the Plaintiffs' claims were deficient due to the absence of proximate cause. Furthermore, the plaintiffs in *Espinosa* did not assert a claim in reliance upon the state's wrongful death statute, as the petitioners did in the instant case. Perhaps most importantly, Respondents submit that, due to the extreme distinctions between the facts and statutory provisions at issue in *Espinosa* and those at issue herein, it is inappropriate to assert that an "inconsistency" (as the term is used for certiorari purposes) exists between the holdings of the Colorado Supreme Court and the Idaho Supreme Court.

III.

Petitioners' Third Question - "Should the Liability of Local Law Enforcement Agents for Violations of Federal Constitutional Rights Depend on where the Violation Occurred?" - Is Inappropriately Before this Court at This Time and Should Be Denied Consideration for the Following Reasons:

1. This question was not raised, briefed or addressed in the trial court or the Idaho Supreme Court. Further, there is no reference in

the record submitted by Petitioners to this Court evidencing that this question was raised and addressed below. A review of the briefs filed in the Idaho Supreme Court regarding this matter indicates that none of the authorities which Petitioners assert in support of this proposition at this time, including the lead case of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 29 L.Ed.2d 619, 91 S.Ct. 1999 (1971), were cited by the Petitioners below in the trial court or in support of any of the arguments Petitioners presented to the Idaho Supreme Court.

2. Assuming arguendo this Court desires to consider this question for the first time at this juncture, it is Respondents' position that it appears Petitioners erroneously believe that 42 U.S.C. Section 1988 mandates uniformity as to the remedies available in the separate states in actions brought pursuant to Section 1983. Respondents submit that, although uniformity may be an obligation imposed by this Court in *Bivens* actions, it is also clear that this Court has long held that the uniformity obligation associated with *Bivens* actions is applicable only in federal court actions involving federal employees and that this Court has rejected similar prior demands for uniformity in Section 1983 actions brought in state courts. For instance, in *Chardon v. Fumero Soto*, 462 U.S. 650, 77 L.Ed. 74, 103 S.Ct. 2611 (1983), quoting from *Robertson v. Wegmann*, this Court stated:

"[W]hatever the value of nationwide uniformity in areas of civil rights enforcement where Congress has not spoken, in the areas to which Section 1988 is applicable Congress has provided direction, indicating that state law will often provide the content of the federal remedial rule. This statutory reliance on state law obviously means there

will not be nationwide uniformity on these issues." 446 U.S., at 489.

In view of this prior ruling, Respondents submit that this Court has made it clear that this issue is controlled by the legislation which the Congress has seen fit to adopt and that if there is to be uniformity, Congress must enact legislation to that effect.

CONCLUSION

As the foregoing analysis illustrates, there are a host of reasons why there is no substance to the Petitioners' request for certiorari in this matter. Those reasons include, but are not limited to: (1) prior correct determinations by the trial court and the Idaho Supreme Court that the Petitioners failed to present an essential element of their case; (2) that the allegedly "conflicting" decisions relied upon by Petitioners are distinguishable on the law and their facts; (3) that the resolution of this case below was in accordance with this Court's prior controlling decisions; (4) that at least one of the questions presented by Petitioners was not raised below; and (5) that the other questions posed by the Petitioners are inapplicable to the actual facts and present nothing more than a request for an advisory opinion as to a hypothetical situation.

In short, the result reach below was both correct and just and Petitioners have presented nothing of sufficient importance to warrant this Court's attention to this matter.

Respondents pray that the Petition for Writ of Certiorari be summarily denied and that they be awarded

just damages and costs in accordance with Supreme Court Rules 42 and 43.

Respectfully submitted,

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App. 1

RESPONDENTS' APPENDIX A

5-311. Suit for wrongful death by or against heirs or personal representatives – Damages. – (1) When the death of a person is caused by the wrongful act or neglect of another, his or her heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death, or in case of the death of such wrongdoer, against the personal representative of such wrongdoer, whether the wrongdoer dies before or after the death of the person injured. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person, or in case of his or her death, his or her personal representatives. In every action under this section, such damages may be given as under all the circumstances of the case as may be just.

(2) For the purposes of subsection (1) of this section, "heirs" mean:

- (a) Those persons who would be entitled to succeed to the property of the decedent according to the provisions of subsection (21) of section 15-1-201, Idaho Code.
- (b) Whether or not qualified under subsection (2)(a) of this section, the decedent's spouse, children, stepchildren, parents, and, when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the illegitimate child of a mother, but not the illegitimate child of the father unless the father has recognized a responsibility for the child's support.

App. 2

1. "Support" includes contributions in kind as well as money.
2. "Services" mean tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the heirs of the decedent. These services may vary according to the identity of the decedent and heir and shall be determined under the particular facts of each case.
 - (c) Whether or not qualified under subsection (2)(a) or (2)(b) of this section, the putative spouse of the decedent, if he or she was dependent on the decedent for support or services. As used in this subsection, "putative spouse" means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.
 - (d) Nothing in this section shall be construed to change or modify the definition of "heirs" under any other provision of law. [I.C., § 5-311, as added by 1984, ch. 158, § 3, p. 385.]

App. 3

RESPONDENTS' APPENDIX B

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

App. 4

RESPONDENTS' APPENDIX C

42 U.S.C. § 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and the Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fees as part of the costs.
